

REMARKS

Reconsideration is respectfully requested.

35 USC §102

The Examiner has rejected Claim 1 and Claim 3 under 35 USC §102, as allegedly being anticipated by McDuffee (US 4,277,853).

Applicant has amended Claim 1 to even further distinguish Applicant's invention from the prior art. The McDuffee reference does not teach a container comprising at least two substantially cylindrical container portions, wherein said two substantially cylindrical container portions are connected together by at least one hinge. Further, McDuffee does not teach wherein said at least one container consists essentially of integrally-molded plastic in combination with Applicant's other claim limitations.

Thus, it is respectfully submitted that rejection of Claim 1 (and all Claims dependent thereon) should be withdrawn.

Applicant believes that all Claims, as amended, are now allowable with respect to 35 USC §102 and respectfully request that all such rejections be withdrawn.

35 USC §103

The Examiner has rejected Claims 1, 3-6, 13 and 15 under 35 USC §103, as allegedly being unpatentable over Nielson (US 4,416,854) in view of McDuffee (US 4,277,853).

Applicant has amended Claim 1 to even further distinguish Applicant's invention from the prior art. Neither the Nielson reference nor the McDuffee reference, nor any combination of the two references, teach a container comprising at least two substantially cylindrical container portions, wherein said two substantially cylindrical container portions are connected together by at least one hinge. Further, neither the Nielson reference nor the McDuffee reference, nor any combination of the two references, teaches wherein said at least one container consists essentially of integrally-molded plastic in combination with Applicant's other claim limitations.

Further, it is well settled that to support an obviousness rejection, the prior art must contain some teaching or suggestion to make the modifications suggested by the Examiner. In this regard, the Federal Circuit has stated that "The mere fact that the prior art **may** be modified in the manner suggested by the Examiner does **not** make the modification obvious unless the prior art suggested the desirability of the modification." (emphasis added) *In re Fritch*, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992.) Applicant respectfully submits that no such suggestion exists in the Nielson reference or the McDuffee reference to so modify or combine the elements to result in the Applicant's claimed invention as suggested by the Examiner. Applicant submits that the

combination of the Nielson and McDuffee references as suggested by the Examiner is NOT obvious.

The Nielson reference is not designed for tablets, but rather for metal chips (Nielson, column 3, lines 8-10, and column 3, lines 49-51). The McDuffy device is designed to keep the water "in a relatively quiet state" (McDuffy, column 3, lines 28-35) rather than allow free flow as per Applicant's Claim limitation 1d). The combination of the McDuffy and Nielson references as suggested by the Examiner would not have been obvious.

Thus, it is respectfully submitted that rejection of Claims 1, 3-6, 13 and 15 under 35 (and all Claims dependent thereon) should be withdrawn.

The Examiner has rejected Claim 2 and Claim 7 under 35 USC §103, as allegedly being unpatentable over McDuffee (US 4,277,853) in view of Goncalves (US 4,143,431).

Applicant has put the limitations of Claim 2 and Claim 7 into Claim 1.

The Federal Circuit has enunciated several guidelines in making a §103 obviousness determination. A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976)). (Emphasis added). Applicant respectfully submits that the Examiner has not provided evidence showing the motivation to combine the McDuffee and Goncalves references as suggested by the Examiner.

The Examiner has stated in reference to McDuffee and Goncalves, "to provide the former to be constructed as taught in Figs. 1-2 of the latter would have been obvious to the ordinary artisan as the use of manufacturing perfecting features of one dispenser would have been *prima facie* obvious for us in another dispenser in order to glean the disclosed and inherent advantages thereof". Applicant respectfully disagrees. As mentioned above, The McDuffy device is designed to keep the water "in a relatively quiet state" (McDuffy, column 3, lines 28-35) rather than allow free flow as per Applicant's Claim limitation 1d). The purpose of the McDuffy device is to stifle the flow of water. As taught by McDuffy (column 1, lines 54-61) "This arrangement maintains the water within the container in a quiet state which minimizes loss of compound particularly when the toilet is not in use. Controlled release occurs when the toilet is flushed but there is no acceleration of the loss of compound due to the combination of openings and the position of the openings in the chamber wall." The Goncalves device serves a different purpose and functions in a completely different way. The Goncalves device is not submerged within a toilet tank; rather, the Goncalves device hangs under the lip of the toilet bowl and is usually dry until the toilet is flushed. When the toilet is flushed water flows over the Goncalves device dissolving the hydrosoluble bar. The Goncalves device requires the opposite of a "relatively quiet state" of water flow to function properly. Combining these two references would not have been obvious to one of ordinary skill in the art at the time the invention was made. Further, to provide the McDuffee device to be constructed as taught in Figs. 1-2 of the Goncalves device would not keep the water "in a relatively quiet state" as McDuffy requires to

function properly. The art must provide a very clear teaching about exactly how to combine these references to achieve Applicant's invention – an "armchair" suggestion by an Examiner *after* seeing Applicant's device is not enough. Finally, Applicant respectfully submits that it would not have been obvious to one of ordinary skill in the art at the time of the invention where to place a hinge on the McDuffy device to connect two substantially cylindrical container portions.

The Federal Circuit has stated: "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 972 F.2d 1260, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992.)

The Examiner has rejected Claims 8-10, 14, 15 and 17-20 under 35 USC §103, as allegedly being unpatentable over Nielson (US 4,416,854) in view of McDuffee (US 4,277,853) and in further view of Goncalves (US 4,143,431).

Applicant repeats in full at this point by reference the entire above arguments regarding the Nielson reference, McDuffee reference, and Goncalves reference.

Applicant respectfully submits there is no teaching within either the Nielson reference, McDuffee reference, Goncalves reference, or elsewhere, for combining the elements as suggested by the Examiner. Applicant submits that any such combination is not obvious, and that there has not been presented a *prima facie* case of obviousness. It is therefore respectfully submitted that rejection of Claims 8-10, 15 and 19-20 should be withdrawn.

Applicant respectfully points out per MPEP § 2141 "The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention."

Claim 9 and Claim 10 depend on Claim 8. Applicant believes that Claim 8 should be allowable and therefore Claim 9 and Claim 10 which each depend from Claim 8 should be allowable.

Applicant believes that all Claims, as amended, are allowable with respect to 35 USC §103, and respectfully request that all such rejections be withdrawn.

For the reasons given above, and after careful review of all the cited references, Applicant respectfully submits that none of the cited references nor any combination of the cited references will result in Applicant's claimed invention in the present Claims, as amended. But even if any such combination might arguably result in such claimed invention, it is submitted that such combination would be non-obvious and patentable.

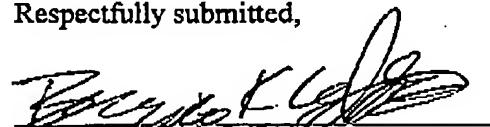
If there are any fees incurred by this Amendment Letter, please deduct them from our Deposit Account NO. 50-1887.

A petition and fee for extension of time under 37 C.F.R. § 1.136(a) have been submitted under separate cover. If there are any fees incurred by this Amendment Letter, please deduct them from our Deposit Account NO. 50-1887.

If the Examiner is inclined for any reason not to issue a notice of allowability after entering this amendment, Applicant respectfully requests that the Examiner grant a telephonic interview to Applicant's undersigned agent in order to discuss Applicant's amendment (before the Examiner prepares a second office action), to attempt to reach mutual understanding and clarify any outstanding issues. Applicant respectfully requests that the Examiner call Applicant's undersigned agent at 602-263-9200 to schedule a telephonic interview at least two business days in advance to allow the Applicant's undersigned agent time to prepare and schedule the interview. For telephonic scheduling purposes, Applicant's agent is located in Arizona, in the Mountain Standard Time zone.

Respectfully submitted,

Date: October 6, 2005

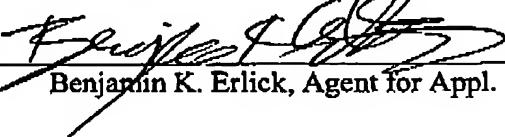


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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted, via facsimile, to the Patent and Trademark Office fax number (571)-273-8300 on October 6, 2005.

Date October 6, 2005

Signature: 

Benjamin K. Erlick, Agent for Appl.